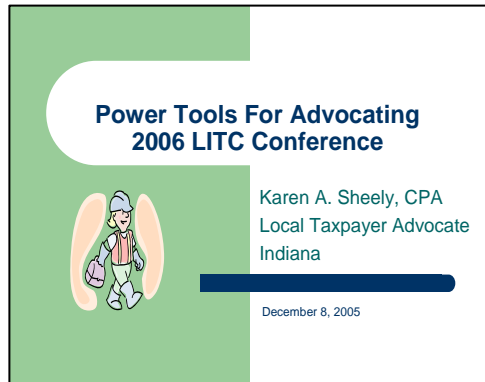
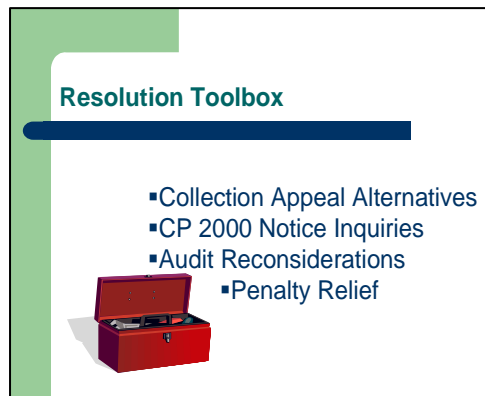


Power Tools for Advocating 2006 LITC Conference December 8, 2006





Notes: _____

Collection Appeal Alternatives

- Collection Appeal Program (CAP)
- Collection Due Process (CDP)
- Equivalent Hearing



Taxpayers may use the Collection Appeal Program (CAP) or Collection Due Process (CDP) – or both – to resolve their Collection issues.

CAP – Collection Appeal Program – Created by the Taxpayer Bill of Rights (TBOR) in the Technical and Miscellaneous Revenue Act of 1988 (TAMRA)

CDP – Collection Due Process – Created by the IRS Restructuring and Reform Act of 1998 (RRA '98)

Collection Appeal Program

Form 9423, Collection Appeal Request, is used to request a CAP Hearing. The CAP process begins with Collection Group Manager. This process offers quicker Appeal rights in more circumstances than CDP, but there is no judicial review. The CAP program covers liens, levies, seizures, and Installment Agreements (IA) that are denied or terminated. Collection activity is generally withheld during the CAP process and the Collection Statute Expiration Date (CSED) is not suspended.

- Manager meeting is mandatory
- Can Appeal (within 2 days of manager meeting)
- Appeals Hearing (within 5 days of receipt by Appeals)
- No Judicial Review
- May Appeal before or after an action

Collection Due Process

Form 12153, Request for a Collection Due Process Hearing, is used to request a CDP Hearing. The CDP program begins with a notice of Collection action containing appeal rights. This course of resolution includes a due process hearing and a judicial review of the issue is available. While the CDP program includes only liens and levies, during the hearing you may bring up other relevant issues. You may even discuss the underlying liability provided the taxpayer did not receive a statutory notice of deficiency and/or did not have a prior opportunity to dispute the liability. Collection action may not proceed while the case is being appealed or pending before a court, unless there is jeopardy to Collection. The CSED is suspended while CDP is being pursued.

- Written notification for actions to be taken or pending
- Notice must include prominently noted Appeal rights
- May Appeal within 30 days of notice
- Appeals Hearing
- Appeal within 30 days to Tax Court (individual, gift, excise tax) or District Court (employment, Internal Revenue Code (IRC) Section 6672, other taxes)

Two Examples of CDP in Action

Notice of Federal Tax Lien Filing (NFTL) – CDP

1. Taxpayer notified within 5 business days of lien filing with explanation of opportunity for hearing and judicial review of this action
2. May request Appeals hearing (within 30 calendar days after the 5 business days)
3. Taxpayer may go to Court to appeal Appeals' decision (Notice of Determination) but must do so within 30 days of the date of the Notice of Determination Letter
4. Nominees & alter egos are not entitled to CDP hearings (can only use CAP)
5. Collection Statute Expiration Date (CSED) is suspended in these cases

Notice of Intent to Levy (L1058) – CDP

1. Taxpayer is notified in writing 30 days before levy action is taken via Letter 1058
2. Taxpayer may request Appeals hearing (within 30 days – even before the action is taken)
3. May go to court regarding decision made by Appeals
4. IRS takes no enforcement action while appeal/court decision is pending or until 30 after the date on the Notice of Determination Letter, except when the court rules there is good cause ***not*** to suspend levy. Collection Statute Expiration Date (CSED) is suspended in these cases

Note: If the request for CDP hearing is not timely (i.e., within 30 days), customer is provided an “Equivalent Hearing” and the CSED is not suspended.

Equivalent Hearing

Equivalent Hearings are not legally required by the Internal Revenue Code (IRC), but they are recommended by the Internal Revenue Manual (IRM) as another means to resolve the taxpayer's issue. An overview of the Equivalent Hearing process is contained in IRM 5.1.9.3.4. An Equivalent Hearing may be appropriate if the request for the CDP Hearing is made after expiration of the IRC 6320 (Lien) or IRC 6330 (Levy) notice period. In these cases, the taxpayer is still afforded the opportunity for an independent review conducted by the Office of Appeals. This hearing is conducted in a similar way to the CDP Hearing and is referred to as an Equivalent Hearing. An Equivalent Hearing may be requested on Form 12153, Request for a Collection Due Process Hearing. *[Editorial Comment: This makes absolutely no sense because the form addresses Appeal rights and suspension of the CSED which are not applicable to an Equivalent Hearing.]*

As is the case with CDP Hearings, in an Equivalent Hearing, other relevant issues may be discussed such as:

- Appropriateness of the Lien or Levy;
- Legal and procedural sufficiency of the actions prescribed;
- Underlying liability (Provided the taxpayer did not receive a statutory notice of deficiency or did not have a prior opportunity to dispute the liability);
- Innocent Spouse provisions;

- Availability of alternative methods of collection such as Installment Agreements (IA), Offer in Compromise (OIC), and pursuit of Currently Not Collectible (CNC) status.

In an Equivalent Hearing, the decision by Appeals is final. The taxpayer cannot Appeal the decision to Tax Court or Federal District Court. Additionally, the statute of limitations on collection is not suspended during the Equivalent Hearing.

There are exceptions. There are exceptions where the taxpayer can Appeal after an Equivalent Hearing. The exceptions are spousal defenses under IRC section 6015, denial of interest abatement under IRC section 6404, or determination of employment status under IRC section 7436. The taxpayer has 90 days to file a petition for review of a denial of innocent spouse relief, 180 days to file a petition for review of denial of interest abatement, and 90 days to file a petition for review of determination of employment status. **There is also the potential for litigation over whether or not the CDP request is timely.**

Levy action during an Equivalent Hearing is not required to be suspended. However, as a general rule, even when not required by statute, levy action is generally suspended pending the Appeals determination. Levy action can be taken if it is determined to be appropriate in the situation. Levy action may be appropriate if: collection is at risk, e.g., dissipating assets, pyramiding additional liabilities; the taxpayer raises only frivolous or constitutional issues; the taxpayer is seeking merely to delay the collection process.

There are exceptions. Collection actions under automated levy programs, such as the State Income Tax Levy Program (SITLP) and the Federal Payment Levy Program (FPLP), are not suspended during an Equivalent Hearing. Appeals should address the levy action during the Equivalent Hearing.

Program Opportunities for Improvement

A recent review of the CDP program by Appeals revealed many taxpayers and representatives were submitting Form 12153 requesting a CDP Hearing without having received any Due Process notice. A taxpayer may not have a Due Process hearing without receiving a Due Process notice. The right to the Due Process hearing and the right to go to court begin with the notice. Unfortunately, the review conducted by Appeals also revealed many Service employees continued to receive these requests and forward them to Appeals.

For those cases where there has not been an official notice of Lien or Levy action with Due Process rights, guidance issued to Appeals employees directs them to refer these cases to the appropriate Collection manager for a CAP conference. Additionally, Appeals employees are directed to re-categorize late-filed CDP requests as Equivalent Hearings.

Unfortunately, the taxpayer and the representative are often left out of this administrative “shell-game.” As a result, they are prepared to discuss other relevant issues in the context of a CDP conference and find this option unavailable.

	CAP	CDP	EQUIVALENT
Prerequisites	Specific Proposed or Taken Collection Actions	Issuance of L3172 or a Final Notice (Lien/Levy)	Issuance of L3172 or a Final Notice (Lien/Levy)
Issues	Appropriateness of: 1) Lien/Levy action taken or proposed 2) Denial/Termination of Installment Agreement 3) Alter-ego, nominee issues 4) Denied Lien applications and actions	Any relevant issue, including: 1) Appropriateness of Lien/Levy 2) Legal & procedural sufficiency 3) Limited challenge of liability 4) Spousal defenses 5) Alternative Collection Methods (IA, OIC, CNC)	Any relevant issue, including: 1) Appropriateness of Lien/Levy 2) Legal & procedural sufficiency 3) Limited challenge of liability 4) Spousal defenses 5) Alternative Collection Methods (IA, OIC, CNC)
Appeals Review Pertains to...	1) Legal & procedural compliance 2) Appropriateness of the action may be examined	1) Legal & procedural compliance 2) Issues raised by the taxpayer 3) Is the Collection action more intrusive than necessary?	1) Legal & procedural compliance 2) Issues raised by the taxpayer 3) Is the Collection action more intrusive than necessary?
Group Manager Conference Required?	Yes	No	No
When to Appeal	Within 2 days of GM conference	Received or postmarked within: 30 days of L1058, LT -11, CP - 90, or ; date of lien filing (date listed on Letter 3172) + 5 days + 30 days	Received or postmarked <u>more</u> than: 30 days of L1058, LT -11, CP - 90, or ; date of lien filing (date listed on Letter 3172) + 5 days + 30 days
Form for Appeal:	Form 9423	Form 12153 or similar information	Form 12153 or similar information
When does RO/ACS send to Appeals:	Within 2 business days after GM receives the Form 9423	After file assembled and issues are clarified/resolved	After file assembled and issues are clarified/resolved
Priority For Appeals:	Close within 5 workdays	High priority	High priority
Enforcement During Appeal:	Generally withheld	Almost always withheld	Generally withheld
CSED Extended?	No	Yes	No
Judicial Review?	No	Yes	No

CP-2000 Notice

The redesigned notice is divided into four sections:

1. Summary Page
2. Frequently Asked Questions (FAQs)
3. Response Form
4. Explanation Section

The CP-2000 notice is used to inform taxpayers there is a discrepancy between what was reported on their return and what was reported to the IRS. With input from CPAs, the actual appearance of this notice radically changed--for the better!

While the CP-2000 notice has been utilized for years to reconcile earned income, investment income and proceeds, and asset sales, the use of this document will be expanded in 2005 to include Schedule K-1 matching.

The notice is divided into four sections: Summary, FAQs, Response Form, and Explanation.

Summary Page

- First page of the redesigned notice
- Informs the taxpayer at a glance
 - why the IRS sent the notice
 - how much may be due
 - what to do to resolve the issue
 - what is included in the notice
 - what happens if notice unanswered

Oddly enough, the Summary Page comes first. Yes, this notice summarizes first. The Summary Page will ALWAYS be the first page of the CP-2000 notice.

The deadline for the taxpayer's response is the opening statement. This part of the notice covers when, why, how, and what if.

Under the heading, "What steps should you take?" the notice actually provides a table of contents.

Frequently Asked Questions

- Appears as second page of notice
- Common questions thoroughly answered
- A specific toll-free phone number will be listed for taxpayers in bankruptcy

The Frequently Asked Questions (FAQ) page is well-researched. This page contains enough procedural information to negate the need to contact the IRS. The two questions most often received by the IRS regarding this process are covered:

- Do I need to file an amended return?
- How do I request an extension of time to respond?

Response Form

- Divided into two pages and always starts on the third page of the notice
- Step A: Agree or disagree
- Step B: Select a payment option
- Step C: Provide contact information

The Response Form section provides a Step-by-Step procedure to help taxpayers respond to the notice.

The pleas of the practitioner community were heard and “Step C” includes a limited-authorization for a representative. This authorization will not be entered on the IRS’s Centralized Authorization File (CAF).

Following Step C, a checklist has been added to ensure a complete response.

Explanation Section

- This section shows the numerical changes.
- Part One: Discrepancies (information returns)
- Part Two: Detailed information about changes
- Part Three: Proposed Tax Computation

The new form has an Explanation Section detailing the discrepancies, changes and proposed tax computation. The instructions listed under “How to Review This Section” sum up the necessary steps for reconciling the taxpayer’s return to the IRS’s information.

Helpful Hint: If the figures in the column headed “Amount Included on Your Return” do not match the taxpayer’s original return, the return was probably changed during processing (Math Error Correction) or post-processing (Exam or Amended Return).

Audit Reconsideration



A process by which the IRS reevaluates the results of a prior audit when a taxpayer disagrees with the original determination by providing information not previously considered during the original examination.

Request for Audit Reconsideration:


- Taxpayer Name, Years Involved, SSN
- Clarity of issues
- State the action you want the IRS to take
- Document the audit trail (Substitute for Return, Examination Report, Original Return)
- Supporting Documentation
 - Original documentation
 - Alternative/additional substantiation

See Publication 3598, What you should know about the Audit Reconsideration Process, for more details.

When Should Reconsideration Be Considered

- Taxpayer did not appear for the audit
- Taxpayer moved and did not receive correspondence from the IRS
- Taxpayer disagrees with an assessment from an audit of his/her return and has additional information to be considered
- Taxpayer disagrees with an assessment based on a substitute for return (SFR) under IRC § 6020(b)
- Taxpayer has been denied tax credits (such as EITC) during a prior examination

Penalty Relief



Generally, relief from penalties falls into four categories:

- Reasonable Cause
- Statutory Exceptions
- Administrative Waivers
- Correction of Service Error

Generally, relief from penalties falls into four separate categories. They are:

- Reasonable Cause
- Statutory Exceptions
- Administrative Waivers
- Correction of Service Error

IRM 20 is your best source for penalty information.

Reasonable Cause

Reasonable Cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable Cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations but is unable to comply with those obligations.

Ordinary business care and prudence is a component of Reasonable Cause

Reasonable Cause relief is not available for all penalties; however, other exceptions may apply. The wording used to describe Reasonable Cause provisions varies throughout the IRC. Some IRC penalty sections also require evidence that the taxpayer acted in good faith or that the taxpayer's failure to comply with the law was not due to willful neglect.

1. The following regulations contain examples of circumstances that may be helpful in determining if a taxpayer has established Reasonable Cause:
 - Accuracy-Related Penalty: 1.6664-4
 - Failure to Pay Penalty: 301.6651-1(c)
 - Failure to File: 301.6651-1(c)
 - Failure to Deposit Penalty: 301.6656-1(b); 301.6656-2(c)
 - Information Returns Penalty: 301.6723-1A(d); 301.6724-1
 - Preparer/Promoter Penalties: 1.6694-2(d); 301.6707-1T

2. The following IRS Policy Statements contain specific criteria that may affect the imposition of penalties.
 - P-2-4, Penalties and interest not asserted against Federal agencies
 - P-2-7, Reasonable Cause for late filing of return or failure to deposit or pay tax when due
 - P-2-9, Timely mailed returns bearing foreign postmarks
 - P-2-11, Certain unsigned returns will be accepted for processing.

Taxpayers have Reasonable Cause when their conduct justifies the nonassertion or abatement of a penalty. The IRS should judge each case individually based on the facts and circumstances at hand. Any request for penalty abatement should consider and detail the following:

- What happened and when did it happen?
- During the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return, paying a tax, or otherwise complying with the law?
- How did the facts and circumstances prevent the taxpayer from complying?
- How did the taxpayer handle the remainder of their affairs during this time?
- Once the facts and circumstances changed, what attempt did the taxpayer make to comply?

Reasonable Cause **does not exist** if, after the facts and circumstances that explain the taxpayer's noncompliant behavior cease to exist, the taxpayer fails to comply with the tax obligation within a reasonable period of time.

Ordinary Business Care and Prudence

Any reason that establishes a taxpayer exercised ordinary business care and prudence but was unable to comply with the tax law may be considered for penalty relief.

Ordinary business care and prudence includes making provision for business obligations to be met when reasonably foreseeable events occur. A taxpayer may establish Reasonable Cause by providing facts and circumstances showing the taxpayer exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless was unable to comply with the law.

In determining if the taxpayer exercised ordinary business care and prudence, review available information including the following:

- a. **Taxpayer's Reason** - The taxpayer's reason should address the penalty imposed. To show Reasonable Cause, the dates and explanations should clearly correspond with events on which the penalties are based.
- b. **Compliance History** - Check the preceding tax years (at least 2) for payment patterns and the taxpayer's overall compliance history. The same penalty, previously assessed or abated, may indicate that the taxpayer is not exercising ordinary business care. If this is the taxpayer's first incident of noncompliant behavior, weigh this factor **with** other reasons the taxpayer gives for Reasonable Cause. The IRS does not consider a first time failure to comply by itself as a basis to establish Reasonable Cause.
- c. **Length of Time** - Consider the length of time between the event cited as a reason for the noncompliance and subsequent compliance. Consider: (1) when the act was required by law, (2) the period of time during which the taxpayer was unable

to comply with the law due to circumstances beyond the taxpayer's control, and (3) when the taxpayer complied with the law.

- d. **Circumstances Beyond the Taxpayer's Control** - Consider whether or not the taxpayer could have anticipated the event that caused the noncompliance. Reasonable Cause is **generally** established when the taxpayer exercises ordinary business care and prudence but, due to circumstances beyond the taxpayer's control, the taxpayer was unable to timely meet the tax obligation. The taxpayer's obligation to meet the tax law requirements is ongoing. Ordinary business care and prudence requires that the taxpayer continue to attempt to meet the requirements, even though late.

Nexus between Ordinary Business Care and Reasonable Cause

In some instances taxpayers may not be aware of specific obligations to file and/or pay taxes. The **ordinary business care and prudence standard** requires that taxpayers make reasonable efforts to determine their tax obligations. Reasonable Cause may be established if the taxpayer shows ignorance of the law in conjunction with other facts and circumstances.

For example, consider:

- a. The taxpayer's education,
- b. If the taxpayer has been subject to the tax,
- c. If the taxpayer has been penalized, or
- d. If there were recent changes in the tax forms or law which a taxpayer could not be reasonably expected to know.

The level of complexity of a tax or compliance issue is another factor that should be considered in evaluating Reasonable Cause because of ignorance of the law. Note: This argument does not work for late filed Estate Tax returns (see *Robert W. Boyle v. Commissioner*, 710 F.2d 1251).

Reasonable Cause should never be presumed, even in cases where ignorance of the law is claimed.

The taxpayer may have Reasonable Cause for noncompliance if:

- a. A reasonable and good faith effort was made to comply with the law, or
- b. The taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement.

The taxpayer may try to establish Reasonable Cause by claiming that a mistake was made.

- a. Generally, this is not in keeping with the **ordinary business care and prudence standard** and does not provide a basis for Reasonable Cause.

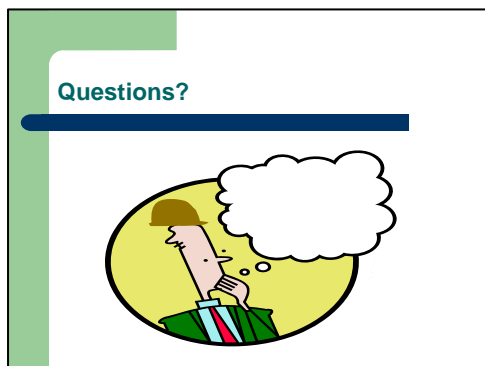
- b. However, the reason for the mistake may be a supporting factor if additional facts and circumstances support the determination that the taxpayer exercised ordinary business care and prudence.

The taxpayer may try to establish Reasonable Cause by claiming forgetfulness or an oversight by the taxpayer or another party caused the noncompliance. Generally, this is not in keeping with **ordinary business care and prudence standard** and does not provide a basis for Reasonable Cause.

- a. Relying on another person to perform a required act is generally not sufficient for establishing Reasonable Cause.
- b. It is the taxpayer's responsibility to file a timely and accurate return and to make timely deposits or payments. This responsibility cannot be delegated.

A complete request for penalty abatement based on a mistake or a claim of ignorance of the law should contain (at a minimum) the following information for consideration by the IRS:

- o When and how the taxpayer became aware of the mistake.
- o The extent to which the taxpayer corrected the mistake.
- o The relationship between the taxpayer and the subordinate.
- o If the taxpayer took timely steps to correct the failure after it was discovered.
- o The supporting documentation.



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